

WATER SUPPLY AND SURPLUS WATER AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill regulates municipalities that provide water to customers outside its political boundaries.

Highlighted Provisions:

This bill:

- defines terms;
- describes the process by which a municipality may provide water to customers outside its political boundaries;
- states that a municipality may not sell its waterworks, in whole or in part, except as provided in statute;
- creates reporting requirements; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

10-7-14, Utah Code Annotated 1953

10-8-14, as last amended by Laws of Utah 2016, Chapter 419

10-8-22, Utah Code Annotated 1953

ENACTS:

73-5-16, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **10-7-14** is amended to read:

10-7-14. Rules and regulations for use of water.

(1) As used in this section:

(a) "Designated water service area" means the area defined by a municipality pursuant to Article XI, Section 6(2) of the Utah Constitution.

(b) "Retail customer" means an end user who:

(i) receives culinary water directly from a municipality's waterworks system; and

(ii) is billed by the municipality for water service.

(c) (i) "Waterworks system" means municipally owned collection, treatment, storage, and distribution facilities for culinary or irrigation water, including pipes, hydrants, and appurtenances to pipes and hydrants.

(ii) "Waterworks system" does not include water rights or sources of supply such as wells, springs, streams, or shares in a mutual irrigation company.

(2) ~~[Every city and town]~~ A municipality may enact ordinances, rules and regulations for the management and conduct of the waterworks system owned or controlled by it.

(3) A municipality that provides water to retail customers outside of its political boundaries shall:

(a) create and maintain a map showing its designated water service area and any other areas outside its political boundaries where retail customers receive water service from the municipality and shall:

(i) transmit a copy of a map described in Subsection (3)(a) to the state engineer; and

(ii) post the a map described in Subsection (3)(a) on its website if it has more than 500 retail customers;

(b) define, by ordinance, an area included in the municipality's designated water service area;

(c) adopt by ordinance any municipality rules or regulations applicable to its designated water service area and to retail customers located outside of its designated water service area; and

(d) adopt, by ordinance, reasonable water rates for retail customers in its designated water service area as provided in Section 10-8-22.

(4) Within its designated water service area, a municipality shall:

(a) provide service to all retail customers in a manner consistent with principles of equal protection; and

(b) apply restrictions on water use to all retail customers in times of anticipated or actual water shortages in a manner consistent with principles of equal protection.

(5) Nothing in this section:

(a) precludes a municipality from enacting service or other restrictions affecting localized areas or its entire designated service area based on operational or maintenance needs, emergency situations, or to address health, safety, and general welfare needs;

(b) expands or diminishes the ability of a municipality to enter into a contract to supply water outside of the municipality's designated water service area; or

(c) alters the authorities or definitions set forth in Title 19, Chapter 4, Safe Drinking Water Act.

(6) A municipality may not sell or convey an interest, in part or in whole, of its waterworks system except to a public entity as defined in Section 73-1-4(1).

Section 2. Section **10-8-14** is amended to read:

10-8-14. Utility and telecommunications services -- Service beyond municipal limits -- Retainage -- Notice of service and agreement.

(1) As used in this section, "public telecommunications service facilities" means the same as that term is defined in Section 10-18-102.

(2) A municipality may:

(a) construct, maintain, and operate waterworks, sewer collection, sewer treatment systems, gas works, electric light works, telecommunications lines, cable television lines, public transportation systems, or public telecommunications service facilities;

(b) authorize the construction, maintenance and operation of the works or systems listed in Subsection (2)(a) by others;

(c) purchase or lease the works or systems listed in Subsection (2)(a) from any person or corporation; and

(d) sell and deliver the surplus product or service capacity of any works or system listed in Subsection (2)(a), not required by the municipality or the municipality's inhabitants, to others beyond the limits of the municipality, except the sale and delivery of:

(i) retail electricity beyond the municipal boundary is governed by Subsections (3) through (8); ~~and~~

(ii) cable television services or public telecommunications services is governed by

95 Subsection (12)[-]; and

96 (iii) water is governed by Sections 10-7-14 and 10-8-22.

97 (3) If any payment on a contract with a private person, firm, or corporation to construct
98 waterworks, sewer collection, sewer treatment systems, gas works, electric works,
99 telecommunications lines, cable television lines, public transportation systems, or public
100 telecommunications service facilities is retained or withheld, it shall be retained or withheld
101 and released as provided in Section 13-8-5.

102 (4) (a) Except as provided in Subsection (4)(b), (6), or (10), a municipality may not sell
103 or deliver the electricity produced or distributed by its electric works constructed, maintained,
104 or operated in accordance with Subsection (2) to a retail customer located beyond its municipal
105 boundary.

106 (b) A municipality that provides retail electric service to a customer beyond its
107 municipal boundary on or before June 15, 2013, may continue to serve that customer if:

108 (i) on or before December 15, 2013, the municipality provides the electrical
109 corporation, as defined in Section 54-2-1, that is obligated by its certificate of public
110 convenience and necessity to serve the customer with an accurate and complete verified written
111 notice described in Subsection (4)(c) that identifies each customer served by the municipality
112 beyond its municipal boundary;

113 (ii) no later than June 15, 2014, the municipality enters into a written filing agreement
114 for the provision of electric service with the electrical corporation; and

115 (iii) the Public Service Commission approves the written filing agreement in
116 accordance with Section 54-4-40.

117 (c) The municipality shall include in the written notice required in Subsection (4)(b)(i)
118 for each customer:

119 (i) the customer's meter number;

120 (ii) the location of the customer's meter by street address, global positioning system
121 coordinates, metes and bounds description, or other similar method of meter location;

122 (iii) the customer's class of service; and

123 (iv) a representation that the customer was receiving service from the municipality on
124 or before June 15, 2013.

125 (5) The written filing agreement entered into in accordance with Subsection (4)(b)(ii)

126 shall require the following:

127 (a) The municipality shall provide electric service to a customer identified in
128 accordance with Subsection (4)(b)(i) unless the municipality and the electrical corporation
129 subsequently agree in writing that the electrical corporation will provide electric service to the
130 customer.

131 (b) If a customer who is located outside the municipal boundary and who is not
132 identified in accordance with Subsection (4)(b)(i) requests service from the municipality after
133 June 15, 2013, the municipality may not provide that customer electric service unless the
134 municipality submits a request to and enters into a written agreement with the electric
135 corporation in accordance with Subsection (6).

136 (6) (a) A municipality may submit to the electrical corporation a request to provide
137 electric service to an electric customer described in Subsection (5)(b).

138 (b) If a municipality submits a request, the electrical corporation shall respond to the
139 request within 60 days.

140 (c) If the electrical corporation agrees to allow the municipality to provide electric
141 service to the customer:

142 (i) the electrical corporation and the municipality shall enter into a written agreement;

143 (ii) the municipality shall agree in the written agreement to subsequently transfer
144 service to the customer described in Subsection (5)(b) if the electrical corporation notifies, in
145 writing, the municipality that the electrical corporation has installed a facility capable of
146 providing electric service to the customer; and

147 (iii) the municipality may provide the service if:

148 (A) except as provided in Subsection (6)(c)(iii)(B), the Public Service Commission
149 approves the agreement in accordance with Section 54-4-40; or

150 (B) for an electrical cooperative that meets the requirements of Subsection 54-7-12(7),
151 the governing board of the electrical cooperative approves the agreement.

152 (d) The municipality or the electrical corporation may terminate the agreement for the
153 provision of electric service if the Public Service Commission imposes a condition authorized
154 in Section 54-4-40 that is a material change to the agreement.

155 (7) If the municipality and electrical corporation make a transfer described in
156 Subsection (6)(c)(ii):

(a) (i) the municipality shall transfer the electric service customer to the electrical corporation; and

(ii) the electrical corporation shall provide electric service to the customer; and

(b) the municipality shall transfer a facility in accordance with and for the value as provided in Section 10-2-421.

(8) (a) In accordance with Subsection (8)(b), the municipality shall establish a reasonable mechanism for resolving potential future complaints by an electric customer located outside its municipal boundary.

(b) The mechanism shall require:

(i) that the rates and conditions of service for a customer outside the municipality's boundary are at least as favorable as the rates and conditions of service for a similarly situated customer within the municipality's boundary; and

(ii) if the municipality provides a general rebate, refund, or other payment to a customer located within the municipality's boundary, that the municipality also provide the same general rebate, refund, or other payment to a similarly situated customer located outside the municipality's boundary.

(9) The municipality is relieved of any obligation to transfer a customer described in Subsection (5)(b) or facility used to serve the customer in accordance with Subsection (6)(c)(ii) if the municipality annexes the property on which the customer is being served.

(10) (a) A municipality may provide electric service outside of its municipal boundary to a facility that is solely owned and operated by the municipality for municipal service.

(b) A municipality's provision of electric service to a facility that is solely owned and operated by the municipality does not expand the municipality's electric service area.

(11) Nothing in this section expands or diminishes the ability of a municipality to enter into a wholesale electrical sales contract with another municipality that serves electric customers to sell and deliver wholesale electricity to the other municipality.

(12) A municipality's actions under this section related to works or systems involving public telecommunications services or cable television services are subject to the requirements of Chapter 18, Municipal Cable Television and Public Telecommunications Services Act.

Section 3. Section **10-8-22** is amended to read:

10-8-22. Water rates.

188 (1) As used in this section:

189 (a) "Designated water service area" means the area defined by a municipality pursuant
190 to Article XI, Section 6(2) of the Utah Constitution.

191 (b) "Retail customer" means an end user who:

192 (i) receives culinary water directly from a municipality's waterworks system; and

193 (ii) is billed by the municipality for water service.

194 (c) (i) "Waterworks system" means municipally owned collection, treatment, storage,
195 and distribution facilities for culinary or irrigation water, including pipes, hydrants, and
196 appurtenances to pipes and hydrants.

197 (ii) "Waterworks system" does not include water rights or sources of supply such as
198 wells, springs, streams, or shares in a mutual irrigation company.

199 (2) [They may] A municipality shall fix the rates to be paid for the use of water
200 furnished by the [city] municipality.

201 (3) The setting of municipal water rates is a legislative act.

202 (4) Within its designated water service area, a municipality shall:

203 (a) establish, by ordinance, reasonable rates for the services provided to its retail
204 customers;

205 (b) use the same method of providing notice to all retail customers of proposed rate
206 changes; and

207 (c) allow all retail customers the same opportunity to appear and participate in public
208 meetings addressing water rates.

209 (5) A municipality may establish different rates for different classifications of retail
210 customers within its designated water service area if such treatment has a reasonable basis.

211 (a) A reasonable basis for charging different rates may include, among other things:

212 (i) differences in the cost of providing service to a particular classification of user;

213 (ii) whether one classification bears more risk in relation to system operations or
214 obligations;

215 (iii) investments or contributions made by customers in one classification to acquire
216 water sources and supply or build or maintain the system that are different from another
217 classification;

218 (iv) needs or conditions of one classification that are distinguishable from the needs or

219 conditions of another classification and, based on economic, public policy or other identifiable
220 elements, support a different rate; and

221 (v) a differential based on other cost of service standards or generally accepted rate
222 setting methods, such as those established by the American Water Works Association.

223 (b) A reasonable basis for charging a different rate does not include an adjustment
224 based solely on the fact that a particular class is located either inside or outside of the
225 municipality's corporate boundary without further justification.

226 (6) If more than ten percent of the retail customers within a large municipal drinking
227 water system's designated water service area are located outside of the municipality's corporate
228 boundary, the municipality shall:

229 (a) post on its website the rates assessed to retail customers within the designated water
230 service area;

231 (b) establish an advisory board to make recommendations to the municipal legislative
232 body for water rates, capital projects and other water service standards;

233 (c) include on the advisory board representatives of retail customers within the
234 designated water service area whose connections are located outside of the municipal boundary
235 as follows:

236 (i) If more than ten percent but less than thirty percent of the retail customers are
237 outside of the municipal boundary, then a minimum of twenty percent of the advisory board
238 members shall represent such customers; or

239 (ii) If thirty percent or more of the retail customers are outside of the municipal
240 boundary, then a minimum of forty percent of the advisory board members shall represent such
241 customers; and

242 (d) solicit recommendations for the representatives described in subsection (6)(c) from
243 any municipality and county whose residents are retail customers within the designated water
244 service area.

245 (7) A municipality that supplies water outside of its designated water service area shall
246 do so only by contract and shall include in the contract the terms and conditions under which
247 the contract can be terminated.

248 (8) A municipality shall:

249 (a) notify the director of the Division of Drinking Water of the contracts it has entered

250 into with a person or entity outside of its designated water service area, including the name and
251 contact information of the person or entity named in each contract; and
252 (b) annually provide any supplementing or new information regarding the contracts
253 described in Subsection (8)(a), including whether there is no new information to provide at that
254 time.

255 Section 4. Section **73-5-16** is enacted to read:

256 **73-5-16. State engineer to publish maps.**

257 The state engineer shall publish conspicuously on the state engineer's website the map
258 or maps submitted by a municipality pursuant to Section 10-7-14(3)(a).

259 Section 5. **Delayed Effective date.**

260 This bill takes effect on January 1, 2021, if the amendment to the Utah Constitution
261 proposed by *****, 2019 General Session, passes the Legislature and is approved by a majority
262 of those voting on it at the next regular general election.